

**COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

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March 24, 2000

At 9:32 a.m., the court met in the Library & courts Building for a continuation of court calendar session. Present: Scotland, Presiding Justice; Morrison, Associate Justice; Callahan, Associate Justice; and Rios, Bailiff.

C029163 MEDIA ONE, Inc. et al. v. PONCE NICASIO BROADCASTING, Inc.
Cause called. Jeffrey H. Ochrach argued for appellants. Todd A. Murray argued for respondents. Cause submitted. (Consolidated with C030609)

C030609 PONCE NICASIO BROADCASTING, Inc. v. MEDIA ONE, Inc.
Cause called. Jeffrey H. Ochrach argued for appellants. Todd A. Murray argued for respondents. Cause submitted. (Consolidated with C029163)

At 10:04 a.m., court recessed. At 10:06 a.m., court reconvened with Presiding Justice Scotland, Associate Justice Blease, and Associate Justice Morrison.

C031420 SCHROEDER v. FRANCHISE TAX BOARD
Cause called. Donnie F. Schroeder in pro per argued for appellant. Kristin M. Daily, Deputy Attorney General, argued for respondents. Cause submitted.

Court adjourned at 10:26 a.m., until 9:30 a.m., April 17, 2000.

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C030411 VILLASENOR et al v. BENSLEY (Not for Publication)
The judgment is affirmed.
Hull, J.
We concur: Blease, Acting P.J.
Morrison, J.

C028450 MATHEWS et al. v. MATHEWS et al.

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- C029328** **(Not for Publication)**
The appeal is dismissed as premature. The parties shall bear their own costs.
SIMS, Acting P.J.
We concur: Raye, J.
Kolkey, J.
- C032377** **THE PEOPLE v. DeWITT, SR.** **(Not for Publication)**
The judgment and sentence are affirmed.
HULL, J.
We concur: Blease, Acting P.J.
Callahan, J.
- C031508** **THE PEOPLE v. FRADIUE** **(Not for Publication)**
The judgment is affirmed.
HULL, J.
We concur: Scotland, P.J.
Davis, J.
- C033438** **THE PEOPLE v. AUGHE** **(Not for Publication)**
The judgment is modified to impose a \$200 state penalty assessment and a \$140 county penalty assessment up the \$200 sex crime fine. As so modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment and to forward a certified copy to the Department of Corrections.
KOLKEY, J.
We concur: Scotland, P.J.
Morrison, J.
- C032968** **THE PEOPLE v. DAYA** **(Not for Publication)**
The judgment is affirmed.
KOLKEY, J.
We concur: Scotland, P.J.
Morrison, J.

March 24, 2000 continued

- C031795** **THE PEOPLE v. TORRES** **(Not for Publication)**
The judgment is modified to reflect no conduct credit leaving a total of four days of presentence custody credit. The trial court is directed to prepare an amended abstract of judgment accordingly and to forward a

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certified copy to the Department of Correction. As modified, the judgment is affirmed.

HULL, J.

We concur: Scotland, P.J.
Sims, J.

**C031607 MAYLE et al. v. GRANT JOINT UNION HIGH SCHOOL DISTRICT et al.
(Not for Publication)**

The judgment is reversed and the matter remanded to the trial court with directions to enter a new order denying defendants' motion for summary judgment. The parties shall bear their own costs on appeal.

HULL, J.

We concur: Sims, Acting P.J.
Callahan, J.

C033154 THE PEOPLE v. SMITH, JR. (Not for Publication)

The judgment is affirmed.

KOLKEY, J.

We concur: Scotland, P.J.
Morrison, J.

C031894 In re Marriage of HAMILTON (Not for Publication)

The order is affirmed.

HULL, J.

We concur: Blease, Acting P.J.
Callahan, J.

C030433 SCI, Inc. v. STEAGALL et al (Not for Publication)

The judgment is affirmed.

HULL, J.

We concur: Blease, Acting P.J.
Morrison, J.

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**C029092 LODI UNIFIED SCHOOL DISTRICT v. VALLEY MOUNTAIN REGIONAL
CENTER (Not for Publication)**

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The judgment is affirmed. The Regional Center is awarded its cost on appeal.

HULL, J.

I concur: Morrison, J.

I concur in the result:

Blease, Acting P.J.

C032403 THE PEOPLE v. RAMIREZ (Not for Publication)

The judgment is affirmed.

KOLKEY, J.

We concur: Blease, Acting P.J.

Morrison, J.

C032568 THE PEOPLE v. EAMES (Not for Publication)

The judgment (order of probation) is modified to provide for state and county penalty assessments (Pen Code, § 1464; Gov. Code, § 76000) of \$50 and \$35, respectively, upon the criminal laboratory analysis fee of \$50 (§ 11372.5) and state and county penalty assessments of \$150 and \$105, respectively, upon the drug program fee of \$150 (§ 11372.5). As modified, the judgment is affirmed.

NICHOLSON, J.

We concur: Scotland, P.J.

Sims, J.

C033150 THE PEOPLE v WASHINGTON, JR . (Not for Publication)

The judgment is modified to award defendant 188 days of custody credit and 94 days of conduct credit, and to impose a \$200 restitution fine suspended pending successful completion of parole (§ 1202.45). As so modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment and to forward a certified copy to the Department of Corrections.

KOLKEY, J.

We concur: Scotland, P.J.

Morrison, J.

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- C032617 THE PEOPLE v. CAMPBELL (Not for Publication)**
Recognizing that two of the one-year enhancements the trial court imposed pursuant to section 667.5, subdivision (b) were unauthorized, we shall exercise our inherent authority to correct the sentence. (People v. Serrato (1973) 9 Cal. 3d 753, 763; disapproved on other grounds in People v. Fosselman (1983) 33 Cal. 3d 572, 583.) We hereby modify the judgment to eliminate the two excess prison term enhancements, leaving defendant with a total sentence of 31 years to life. As modified, the judgment is affirmed. The trial court shall prepare an amended abstract of judgment and forward it to the Department of Corrections forthwith.
SIMS, Acting P.J.
We concur: Davis, J.
 Callahan, J.
- C029608 In re KENNETH H.; THE PEOPLE v. KENNETH H. (Not for Publication)**
The juvenile court order denying the minor's motion to compel specific performance by the prosecution of its plea agreement with the minor is reversed, and the jurisdictional finding and dispositional order are vacated. The matter is remanded to the juvenile court with directions to reconsider the minor's motion as a request by the district attorney to dismiss the case. If the court grants the motion, it shall dismiss the petition. (Welf. \$ Inst. Code, § 782.) If, after making record adequate for review, the court denies the motion, it shall reinstate the jurisdictional finding and dispositional order, except that the court shall strike the drug search condition.
SCOTLAND, P.J.
We concur: Raye, J.
 Hull, J.
- C019484 KRUSEMARK CONSTRUCTION, Inc. v. LODI UNIFIED SCHOOL STATE; SAFECO INSURANCE COMPANY OF AMERICA (Not for Publication)**
The judgment is affirmed. The matter is remanded to the trial court for the determination of Safeco's attorney fees. Krausemark and Safeco shall recover their costs on appeal.
RAYE, J.
We concur: Sims, Acting P.J.
 Morrison, J.

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C031304 THE PEOPLE v. BOWEN (Not for Publication)
The trial court shall amend the abstract of judgment to reflect sentence on the conspiracy count is stayed pursuant to section 654 and the trial court shall send a copy of the amended abstract to the Department of Corrections. The judgment is otherwise affirmed.
SIMS, Acting P.J.
We concur: Raye, J.
 Callahan, J.

C029450 THE PEOPLE v. PARRATT (Not for Publication)
The judgment is affirmed.
BLEASE, Acting P.J.
We concur: Sims, J.
 Callahan, J.

**MISC. ORDER
2000-02**

Associate Justice Coleman A. Blease is appointed to serve as Acting Presiding Justice to discharge the duties described in Rules 75, 76, 77 and 78 of the California Rules of Court during the absence of the Presiding Justice from the court on April 3, 2000. Associate Justice Richard M. Sims III is appointed to serve as Acting Presiding Justice to discharge to duties described in Rules 75, 76, 77 and 78 of the California Rules of Court during the absence of the Presiding Justice from the court for the period of April 4, 2000, through April 5, 2000, or until his return. (See Cal. Const. Art 6, Sec. 3.) The senior member of a panel of the Court is designated the Acting Presiding Justice of the panel during the absence of the Presiding Justice.

March 28, 2000

C030983 McBRIDE v. REED et alia (Not for Publication)
The purported appeal of bankrupt defendant is dismissed. The judgment otherwise is affirmed. The plaintiff shall recover costs of appeal.
DAVIS, J.
We concur: Sims, Acting P.J.
 Callahan, J.

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The judgment is affirmed.
BLEASE, Acting P.J.
We concur: Davis, J.
Nicholson, J.

The judgment is affirmed.
CALLAHAN, J.
We concur: Blease, Acting P.J.
Hull, J.

The order terminating appellant's parental rights is affirmed.
KOLKEY, J.
We concur: Nicholson, Acting P.J.
Hull, J.

The order of the juvenile court appointing Dorothy J., Tommie J., and Annette M. as guardians of Markiesha is affirmed.
KOLKEY, J.
We concur: Sims, Acting P.J.
Raye, J.

The judgment is affirmed.
HULL, J.
We concur: Blease, Acting P.J.
Davis, J.

**C031276 DEPARTMENT OF MOTOR VEHICLES v. NEW MOTOR VEHICLE
BOARD; CHRYSLER MOTOR CORPORATION**

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(Not for Publication)

The trial court's judgment is affirmed. Real party in interest and respondent shall recover its costs on appeal from appellant.

SIMS, Acting P.J.

We concur: Nicholson, J.

Hull, J.

March 29, 2000 continued

C032775 HAYNIE v. ANHEUSER-BUSCH COMPANIES, Inc. et al.

The judgment is affirmed.

NICHOLSON, J.

We concur: Blease, Acting P.J.

Raye, J.

C030089 THE PEOPLE v DeHERRERA, JR.

(Not for Publication)

The judgment is affirmed.

CALLAHAN, J.

I concur: Davis, J.

I concur in the result:

Blease, Acting P.J.

**C030399 THE BLUE HERON MANOR, Inc. et al. v. LA CONTENTA
HOMEOWNERS ASSOCIATION et al. (Not for Publication)**

The judgment is affirmed. Although defendant has requested that sanctions be imposed against plaintiffs for perfecting a frivolous appeal, we can find no indication in this record that the appeal was filed in bad faith or for purposes of delay. Moreover, because the analysis of the fact/opinion dichotomy can be slippery, we conclude the appeal is not frivolous. (In re Marriafe of Flaherty (1982) 31 Cal. 3d 637, 650; Owens v. Intertec design, Inc. (1995) 38 Cal. App. 4th 72, 75, fn. 1.) Plaintiffs shall, however, pay for defendants' costs of appeal. (Cal. Rules of Court rule 26(a).)

RAYE, J.

We concur: Scotland, P.J.

Kolkey, J.

**C031697 In re WESSLEY G.; DEPARTMENT OF HEALTH AND HUMAN
SERVICES v. CHRISTINE M.**

The orders are reversed, and the matter is remanded for further proceedings consistent with this opinion.

DAVIS, J.

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The judgment is affirmed. Defendant shall recover its costs on appeal.
SIMS, J.

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We concur: Scotland, P.J.
Kolkey, J.

C032025 PECKLER et al. v. CRYSTAL BAY CLUB (Not for Publication)
The judgment is affirmed. Crystal Bay shall receive its costs on appeal.
HULL, J.
We concur: Morrison, Acting P.J.
Kolkey, J.

March 29, 2000 continued

C030400 VEGA v. BANK OF THE WEST
The judgment is affirmed. The Bank shall receive its costs on appeal.
SIMS, Acting P.J.
We concur: Nicholson, J.
Hull, J.

**C031681 THE FUTURE, CITY OF PLYMOUTH AND FOOTHILL CONSERVANCY
v. EL DORADO COUNTY BOARD OF SUPERVISORS AND COUNTY
OF EL DORADO (Certified for Publication)**
The portion of the appeal order awarding \$1,650 in attorney fees to the city of Plymouth is affirmed. The provisions of two orders denying plaintiffs' section 1021.5 motions for attorney fees for the trial and the appeal of Future I are reversed. We remand this matter to the trial court for it to consider whether the cost of this litigation is out of proportion to these interests, the court shall determine and award the amount of these trial and appeal attorney fees, as well as the amount of attorney fees incurred in the recent proceedings, including the section 1021.5 motion proceedings and the present appeal (Los Angeles Police Protective League v. City of Los Angeles, supra 188 Cal. App. 3d at p. 17 [a successful appellant is entitled to a section 1021.5 award of attorney fees for both the trial and appeal of the attorney fee issue itself]. Plaintiffs are awarded their costs for the present appeal.
DAVIS, J.
I concur: Nicholson, J.
I concur with the majority opinion to the extent it concludes the trial court abused its discretion in refusing to award fees, so that the matter should be remanded to the trial. However, I respectfully dissent from the majority's conclusion that the aesthetic interest of the plaintiffs may serve to defeat an award of fees under Code of Civil Procedure section 1021.5.

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For these reasons, then, I respectfully dissent from the majority's conclusion that plaintiffs' aesthetic interests, which are not grounded in any pecuniary gain, are sufficient to defeat an award of fees on remand.
Sims, Acting P.J.

**C033891 In re AMBROSIA L.; SACRAMENTO COUNTY DEPARTMENT OF
HEALTH AND HUMAN SERVICES v. CRYSTAL R.
(Not for Publication)**

The orders of the juvenile court are affirmed.

KOLKEY, J.

We concur: Scotland, P.J.
Morrison, J.

March 29, 2000 continued

C032440 AUTEN v. LLOYD (Not for Publication)

The judgment is affirmed.

KOLKEY, J.

We concur: Sims, Acting P.J.
Raye, J.

**C031177 STROUP et al. v. PROGRESSIVE INSURANCE COMPANY
(Not for Publication)**

The judgment is affirmed. Progressive shall receive its costs on appeal.

SIMS, Acting P.J.

We concur: Raye, J.
Kolkey, J.

**C030198 DeLONG v. ST. JOSEPH'S MEDICAL CENTER
(Not for Publication)**

The judgment is affirmed. Delong shall recover her costs on appeal.

SIMS, Acting P.J.

We concur: Nicholson, J.
Hull, J.

C031402 THE PEOPLE v. PETERSON (Not for Publication)

The judgment is affirmed.

HULL, J.

We concur: Scotland, P.J.
Davis, J.

C032711 THE PEOPLE v. VILLANUEBA (Not for Publication)

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The judgment is reversed and the matter is remanded to the trial court for further proceedings consistent with this opinion.

HULL, J.

I concur: Blease, Acting P.J.

I concur in the result:

Callahan, J.

C033120 THE PEOPLE v. PHAN (Not for Publication)

The appeal is dismissed.

SCOTLAND, P.J.

We concur: Nicholson, J.

Morrison, J.

March 29, 2000 continued

C031998 THE PEOPLE v. LITTLE (Not for Publication)

The trial court is directed to prepare a corrected abstract of judgment to reflect the 30-day concurrent term for count 2 resisting a peace officer, a misdemeanor (Pen. Code, § 148), and to forward a certified copy of the same to the Department of Corrections. The judgment is affirmed.

KOLKEY, J.

We concur: Scotland, P.J.

Morrison, J.

C030093 THE PEOPLE v. SMITHSON
C030715 THE PEOPLE v. SPENCE (Certified for Partial for Publication)

The judgment against Spence and Smithson are affirmed.

NICHOLSON, J.

We concur: Blease, Acting P.J.

Hull, J.

C030088 THE PEOPLE v. GRIFFITH, JR. (Not for Publication)

The rape-murder special circumstance finding is reversed. The restitution fine of \$200 and restitution order of \$2,275 to Sacramento County, as imposed by Judge Geoghegan and incorporated by Judge Sapunor in his June 30, 1998 order, are stricken; the amount of victim restitution originally specified by Judge Sapunor was \$45,609 rather than \$45,609.32; consequently, the amount of victim being ordered is \$43,134 (\$45,609 minus \$200 minus \$2,275); with those modifications, restitution shall be as specified in Judge Sapunor's order of June 30,

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1998, as reconfirmed, in his minute order of June 4, 1999. The judgment is modified to reflect 344 days of actual prison custody between the original sentencing and the resentencing, for total of 1814 days of credit. The trial court is directed to prepare an amended abstract of judgment reflecting these modifications and to send a copy of that abstract to the Department of Corrections. In all other respects, and as so modified, the judgment is affirmed.

DAVIS, J.

We concur: Blease, Acting P.J.
 Callahan, J.

March 30, 2000

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| C027848 | RICHARDS v. HILL, Inc. | (Certified for Publication) |
| | The judgment is reversed, and the matter is remanded to the trial court for further proceedings consistent with this opinion. Plaintiff may proceed on her claims concerning defendant's failure to reasonably accommodate her in connection with a fire escape plan, hallway access, and access to the elevator and the supply room. The parties shall bear their own costs on appeal. | |
| | KOLKEY, J. | |
| | We concur: Scotland, P. J.
Nicholson, J. | |
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| C032972 | THE PEOPLE v. LANDO | (Not for Publication) |
| | The judgment is affirmed. | |
| | RAYE, J. | |
| | We concur: Sims, Acting P.J.
Callahan, J. | |
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| C027503 | THE PEOPLE v. CUSH | (Not for Publication) |
| | The case is remanded to the trial court to determine which, if any, of the counts were based on acts committed before the effective date of section 2933.1 and to modify the abstract of judgment to indicate those counts exempt from the statutory credit limitation. In all other respects, the judgment is affirmed. | |

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RAYE, J.
We concur: Blease, Acting P.J.
Callahan, J.

C031694 THE PEOPLE v. HARRIS (Not for Publication)

The judgment is affirmed.
SIMS, Acting P.J.
We concur: Raye, J.
Callahan, J.

C031511 MATHEWS et al. v. MATHEWS et al. (Not for Publication)

The dismissal order is affirmed. Rader and Gray shall recover their costs on appeal.
SIMS, Acting P.J.
We concur: Raye, J.
Kolkey, J.

March 30, 2000 continued

C033633 In re KEVIN A.; THE PEOPLE v. KEVIN A. (Not for Publication)

The order appealed from is affirmed.
SIMS, Acting P.J.
We concur: Raye, J.
Callahan, J.

C032151 THE PEOPLE v. MONTGOMERY (Not for Publication)

The judgment is affirmed.
SIMS, Acting P.J.
We concur: Raye, J.
Callahan, J.

C031317 In re Marriage of JONES v. WICKS (Not for Publication)

The judgment (order) is affirmed. Reese shall receive his costs on appeal.
SIMS, Acting P.J.
We concur: Raye, J.
Morrison, J.

C031321 LUNKLEY v. VALLEY OFF ROAD RACING ASSOCIATION et al.

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The judgment is affirmed. The defendant shall recover his costs on appeal.

BLEASE, Acting P.J.

We concur: Callahan, J.
Hull, J.

C032176

THE PEOPLE v. APOLINAR

(Not for Publication)

The judgment is affirmed.

RAYE, J.

We concur: Sims, Acting P.J.
Callahan, J.

MARCH 31, 2000

C031420

SCHROEDER v. FRANCHISE TAX BOARD

The judgment is affirmed.

MORRISON, J.

We concur: Scotland, P.J.
Blease, J.

March 31, 2000 continued

C032293

THE PEOPLE v. BRODIE

(Not for Publication)

The judgment is affirmed. The trial court is directed to correct the abstract of judgment and to forward a certified copy to the Department of Corrections.

MORRISON, J.

We concur: Scotland, P.J.
Kolkey, J.

C030980

THE PEOPLE v. DELAROSA

(Not for Publication)

The judgment is affirmed.

BLEASE, Acting P.J.

We concur: Morrison, J.
Kolkey, J.

C032409

THE PEOPLE v. HOWARD

(Not for Publication)

The judgment is affirmed.

DAVIS, J.

We concur: Scotland, P.J.
Morrison, J.

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We concur: Scotland, P.J.
Kolkey, J.